TO THE HOUSE	OF REPRESEN'	LATIVES.
	OF REFERENCE	$\mathbf{L} \cap \mathbf{L} \cap $

- The Committee on General, Housing, and Military Affairs to which was referred House Bill No. 329 entitled "An act relating to amending the prohibitions against discrimination" respectfully reports that it has considered the same and recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:
- 7 Sec. 1. 21 V.S.A. § 495 is amended to read:

## § 495. UNLAWFUL EMPLOYMENT PRACTICE

- (a) It shall be unlawful employment practice, except where a bona fide occupational qualification requires persons of a particular race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, crime victim status, or physical or mental condition:
- (1) For any employer, employment agency, or labor organization to <a href="https://example.com/harass.or">harass.or</a> discriminate against any individual because of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, crime victim status, or age or against a qualified individual with a disability;

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(3) For any employment agency to fail or refuse to classify properly or refer for employment or to otherwise <u>harass or</u> discriminate against any individual because of race, color, religion, ancestry, national origin, sex, sexual

1	orientation, gender identity, place of birth, crime victim status, or age or
2	against a qualified individual with a disability;
3	(4) For any labor organization, because of race, color, religion, ancestry,
4	national origin, sex, sexual orientation, gender identity, place of birth, crime
5	victim status, or age to harass or discriminate against any individual or against
6	a qualified individual with a disability or to limit, segregate, or qualify its
7	membership;
8	* * *
9	(8) Retaliation prohibited. An employer, employment agency, or labor
10	organization shall not discharge or in any other manner <u>harass or</u> discriminate
11	against any employee because the employee:
12	* * *
13	(i)(1) [FOR COMMITTEE DISCUSSION] An employee's decision not to
14	pursue an internal grievance, complaint, or other remedial process with the
15	employer, employment agency, or labor organization shall not be
16	determinative in any claim that an employer, employment agency, or labor
17	organization violated the provisions of this section.
18	(2) An employee shall not be required to demonstrate the existence of
19	another employee or individual to whom the employee's treatment can be
20	compared in determining whether a violation of the provisions of this section
21	occurred.

1	(j)(1) [FOR COMMITTEE DISCUSSION] The General Assembly finds
2	that claims of unlawful discrimination in violation of the provisions of this
3	section are rarely appropriate for summary judgment.
4	(2) Notwithstanding any State or federal judicial precedent to the
5	contrary:
6	(A) [FOR COMMITTEE DISCUSSION] the provisions of this
7	section shall be construed liberally to accomplish its remedial purposes and
8	any exceptions and exemptions to the provisions of this section shall be
9	construed narrowly in order to maximize the deterrence of discriminatory
10	behavior; and
11	(B) harassment and discrimination need not be severe or pervasive to
12	constitute a violation of this section.
13	Sec. 2. 21 V.S.A. § 495d is amended to read:
14	§ 495d. DEFINITIONS
15	As used in this subchapter:
16	* * *
17	(13)(A) "Sexual harassment" is a form of sex discrimination and means
18	unwelcome sexual advances, requests for sexual favors, and other verbal or,
19	physical, written, auditory, or visual conduct of a sexual nature when:
20	(A)(i) submission to that conduct is made either explicitly or
21	implicitly a term or condition of employment;

1	(B)(ii) submission to or rejection of such conduct by an individual is
2	used as a component of the basis for employment decisions affecting that
3	individual; or
4	(C)(iii) the conduct has the purpose or effect of substantially
5	interfering with an individual's work performance or creating an intimidating,
6	hostile, or offensive work environment.
7	(B) Sexual harassment need not be severe or pervasive in order to be
8	unlawful pursuant to this subchapter.
9	* * *
10	(16) "Harass" means to engage in unwelcome conduct based on an
11	employee's race, color, religion, national origin, sex, sexual orientation, gender
12	identity, ancestry, place of birth, age, crime victim status, or physical or mental
13	condition that interferes with the employee's work or creates a work
14	environment that is intimidating, hostile, or offensive. In determining whether
15	conduct constitutes harassment:
16	(A) The determination shall be made on the basis of the record as a
17	whole, according to the totality of the circumstances, and a single incident may
18	constitute unlawful harassment.
19	(B) Incidents that may be harassment shall be considered in the
20	aggregate with varying types of conduct and conduct based on multiple
21	characteristics viewed in totality, rather than in isolation.

1	(C) Conduct may constitute harassment, regardless of whether:
2	(i) the complaining employee is the individual being harassed;
3	(ii) the complaining employee acquiesced or otherwise submitted
4	to or participated in the conduct;
5	(iii) the conduct is also experienced by others outside of the
6	protected class involved in the conduct;
7	(iv) the complaining employee was able to continue carrying out
8	the employee's job duties and responsibilities despite the conduct;
9	(v) the conduct resulted in a physical or psychological injury; or
10	(vi) [FOR COMMITTEE DISCUSSION] the conduct occurred
11	outside of the workplace.
12	Sec. 3. 9 V.S.A. § 4500 is amended to read:
13	§ 4500. LEGISLATIVE <u>FINDINGS AND</u> INTENT
14	(a) [FOR COMMITTEE DISCUSSION] The General Assembly finds that
15	claims of unlawful discrimination in violation of the provisions of this chapter
16	are rarely appropriate for summary judgment.
17	(b) The provisions of this chapter establishing legal standards, duties, and
18	requirements with respect to persons with disabilities in places of public
19	accommodation as defined herein in this chapter, except those provisions
20	relating to remedies, are intended to implement and to be construed so as to be
21	consistent with the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

1	and rules adopted thereunder under that Act, and are not intended to impose
2	additional or higher standards, duties, or requirements than that act Act.
3	(b)(c) Subsections 4502(b) and (c) of this title shall not be construed to
4	create or impose on governmental entities additional or higher standards,
5	duties, or requirements than that imposed by Title II of the Americans with
6	Disabilities Act.
7	(d) [FOR COMMITTEE DISCUSSION] Notwithstanding any State or
8	federal judicial precedent to the contrary, the provisions of this chapter shall be
9	construed liberally to accomplish its remedial purposes and any exceptions and
10	exemptions to the provisions of this chapter shall be construed narrowly in
11	order to maximize the deterrence of discriminatory behavior.
12	Sec. 4. 9 V.S.A. § 4501 is amended to read:
13	§ 4501. DEFINITIONS
14	As used in this chapter:
15	* * *
16	(12) "Harass" means to engage in unwelcome conduct based on a
17	person's race, color, religion, national origin, sex, sexual orientation, gender
18	identity, ancestry, place of birth, age, crime victim status, or physical or mental
19	condition that detracts from, undermines, or interferes with the person's terms,
20	conditions, privileges, or protections in the sale or rental of a dwelling or other
21	real estate, or in the provision of services or facilities in connection with the

1	sale or rental of a dwelling or other real estate. Notwithstanding any judicial
2	precedent to the contrary, such conduct need not be severe or pervasive to be
3	unlawful pursuant to the provisions of this chapter. In determining whether
4	conduct constitutes harassment:
5	(A) The determination shall be made on the basis of the record as a
6	whole, according to the totality of the circumstances, and a single incident may
7	constitute unlawful harassment.
8	(B) Incidents that may be harassment shall be considered in the
9	aggregate with varying types of conduct and conduct based on multiple
10	characteristics viewed in totality, rather than in isolation.
11	(C) Conduct may constitute harassment, regardless of whether:
12	(i) the complaining person is the individual being harassed;
13	(ii) the complaining person acquiesced or otherwise submitted to
14	or participated in the conduct;
15	(iii) the conduct is also experienced by others outside of the
16	protected class involved in the conduct;
17	(iv) the complaining person was able to enjoy the benefit of
18	applicable terms, conditions, privileges, or protections in the sale or rental of a
19	dwelling or other real estate, or to obtain services or facilities in connection
20	with the sale or rental of a dwelling or other real estate despite the conduct;
21	(v) the conduct resulted in a physical or psychological injury; or

1	(vi)  FOR COMMITTEE DISCUSSION  the conduct occurred
2	outside of the place of public accommodations or dwelling.
3	Sec. 5. 16 V.S.A. § 11 is amended to read:
4	[FOR COMMITTEE DISCUSSION] § 11. CLASSIFICATIONS AND
5	DEFINITIONS
6	(a) As used in this title, unless the context otherwise clearly requires:
7	* * *
8	(26)(A) "Harassment" means an incident or incidents of verbal, written,
9	visual, or physical conduct, including any incident conducted by electronic
10	means, based on or motivated by a student's or a student's family member's
11	actual or perceived race, creed, color, national origin, marital status, sex,
12	sexual orientation, gender identity, or disability that has the purpose or effect
13	of objectively and substantially undermining and detracting from or interfering
14	with a student's educational performance education or access to school
15	resources or creating an objectively intimidating, hostile, or offensive
16	environment.
17	* * *
18	(C) Notwithstanding any judicial precedent to the contrary, the conduct
19	described in this subdivision (a)(26) need not be severe or pervasive to
20	constitute harassment. In determining whether conduct constitutes harassment:

1	(A) The determination shall be made on the basis of the record as a
2	whole, according to the totality of the circumstances, and a single incident may
3	constitute unlawful harassment.
4	(B) Incidents that may be harassment shall be considered in the
5	aggregate with varying types of conduct and conduct based on multiple
6	characteristics viewed in totality, rather than in isolation.
7	(C) Conduct may constitute harassment, regardless of whether:
8	(i) the complaining student is the individual being harassed;
9	(ii) the complaining student acquiesced or otherwise submitted to
10	or participated in the conduct;
11	(iii) the conduct is also experienced by others outside of the
12	protected class involved in the conduct;
13	(iv) the complaining student was able to continue the student's
14	education or access school resources despite the conduct;
15	(v) the conduct resulted in a physical or psychological injury; or
16	(vi) [FOR COMMITTEE DISCUSSION] the conduct occurred
17	outside of the student's school.
18	* * *
19	Sec. 6. 12 V.S.A. § 525 is added to read:
20	§ 525. ACTIONS BASED ON DISCRIMINATION

1	An action under 9 V.S.A. § 4506(a) or 21 V.S.A. § 495b shall be	
2	commenced within six years after the cause of action accrues and not after.	
3	Sec. 7. EFFECTIVE DATE	
4	This act shall take effect on July 1, 2022.	
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10		
11	(Committee vote:)	
12		-
13	Representative	_
14	FOR THE COMMITTEE	